The Life of a Workers' Compensation Claim

Course Objective

This course is intended to provide Return to Work Coordinators (RTWC) with an understanding of a typical workers' compensation claim by following the process from initiation to resolution.

Upon completion, you will have a better understanding of the workers compensation claim process and you will be better able to serve the employees of your agency.

Topics To Be Covered

- Injury
- Determining Liability
- Types of Claims
- Basic Workers' Compensation Benefits
- QME vs. AME
- Permanent Disability
- Claims Resolution

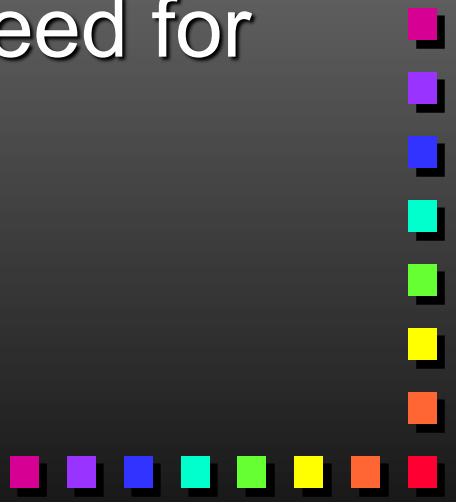
Phases of an Injury

- Injury
- Diagnosis
- Medical treatment
- Release from treatment
- Permanent and stationary status
- Settlement

What is an Injury….

- Injury includes any injury or disease arising out of the employment (LC 3208)

- Causes disability (either Temporary or Permanent) or Results in the need for medical treatment (LC 3208.1)



An Injury Can be….

- Specific – Occurring as a result of a one time incident or exposure
- Cumulative – Occurring as repetitive mentally or physically traumatic activities extending over a period of time

Employer Responsibilities

Labor Code 5401 requires that the employer :

Provide an Employees' Claim Form for Workers' Compensation Benefits (DWC–1, e3301) to the injured worker within one working day of knowledge that an injury has occurred or is being alleged

http://www.statefundca.com/statecontracts/Forms.asp

Employer Responsibilities

Labor Code 5402 requires that the employer:

- Authorize Medical treatment within one working day of an Employee Claim form being filed.

Employer Responsibilities

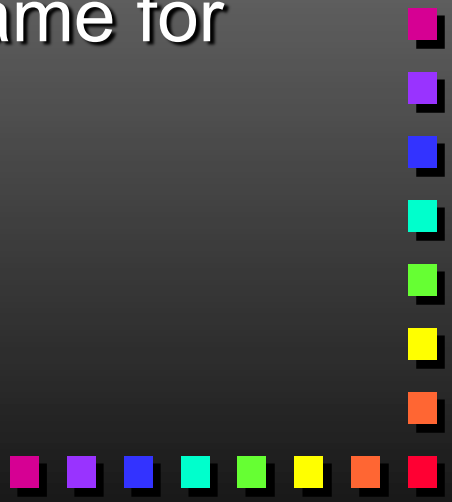
Labor Code 6409.1 requires that the employer :

- Submit an Employers' First Report of Injury (e3067S) to State Fund within 5 days of knowledge that an injury has occurred or is being alleged

http://www.statefundca.com/statecontracts/Forms.asp

Employer's Responsibilities

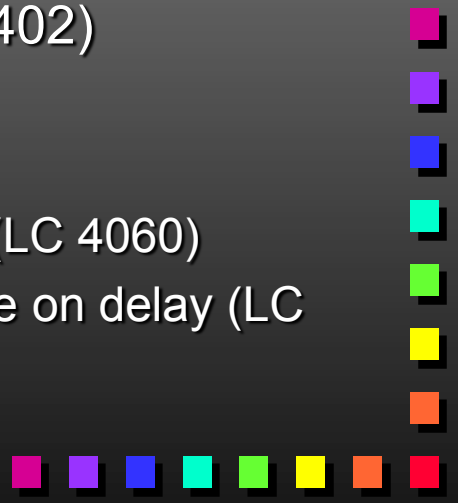
- LC 5402 - employers/insurers have 90 days from the filing of the claim form to investigate and make a liability decision.
  - State Fund knowledge and employer knowledge are considered the same for determining the 90 day period



State Fund's Responsibilities

Labor Code 4060 and 5402

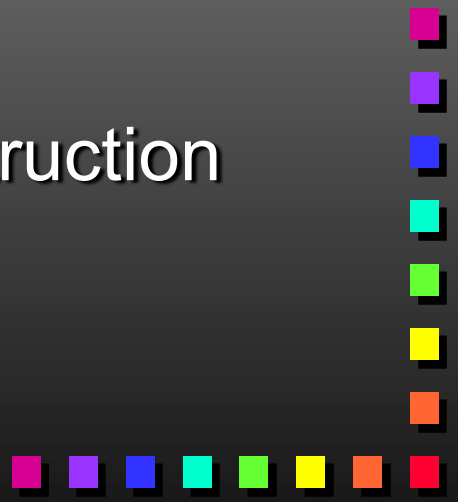
- Make a decision and notify the injured employee within 14 days of the Employer's knowledge
  - Accept
  - Deny
  - Delay – 90 days to make a decision (LC 5402)
    - Obtain medical records
    - Investigate
    - Obtain a medical evaluation (panel QME) (LC 4060)
    - Pay up to $10,000 in medical benefits while on delay (LC 5402)



Determining Liability

Primary issues related to determining liability...

- AOE/COE
- Labor Code 3202: Liberal Construction
- Presumptive Injuries or Illnesses
- Medical Substantiation



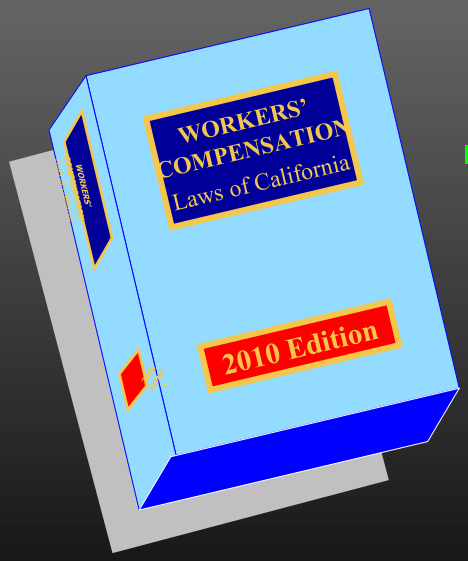
AOE/COE

In order for a claim to be considered compensable under California law, one of two elements must be present:

- the injury must Arise out of Employment (AOE)
- the injury must occur in the Course of Employment (COE)

Liberal Construction

- LC 3202 - Liberally Construed -The benefit of the doubt goes to the injured worker
- LC 3202.5 - burden of proof by Preponderance of evidence



Psychiatric Injuries

Labor Code 3208.3

- Must be 51% or more industrially caused
- Not industrial with less than 6 months employment unless:
  - A victim of or exposed to violent act
  - Psyche is connected to physical injury
- Can not be a result of a lawful, non-discriminatory, good faith personnel action.

Presumptive Injuries & Illnesses

Must provide EE Claim form

- LC 3212 through 3213.2
- Certain state and local public safety members & fire fighting personnel are entitled to a statutory presumption that the condition "arose out of and in the course of employment during the employment period."
- No apportionment to pre-existing conditions on Presumptive cases.

Presumptive Injuries & Illnesses

- Heart trouble
- Hernia
- Tuberculosis
- Meningitis
- Lower Back Impairment
- Pneumonia
- Lyme Disease
- Cancer
- Bio-chemical Exposure
- Blood-borne Infectious Diseases & MRSA

Medical Substantiation

LC5402 - ER must authorize treatment within one working day

- Pre-designated treating physician
- Employer Selected Physician
  - Must be posted in a visible area that is frequented by employees
  - Should be a doctor from the MPN
- Medical Provider Network (MPN)
  - Employers should refer all employees who have not pre-designated a treating physician to an MPN doctor

http://www.statefundca.com/claims/MPNHome.asp

Types of Claims –

Handled by State Fund

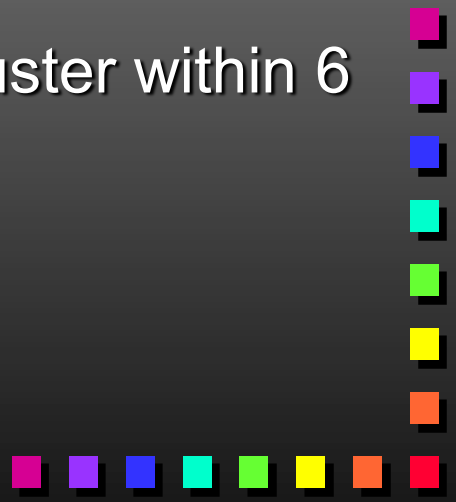
- Non-Disability
- Mini-Disability
- Disability
- Maintenance

Non-Disability Claims

- Those claims that result in 3 days or less of medically-authorized temporary disability, or lost-time from work
- Usually less complex types of injuries requiring limited medical oversight
- No Permanent Disability reasonably expected
- Do not involve legal representation
- Closed or transferred to Disability claim within 6 months of DOI
- Assigned to the WCIT

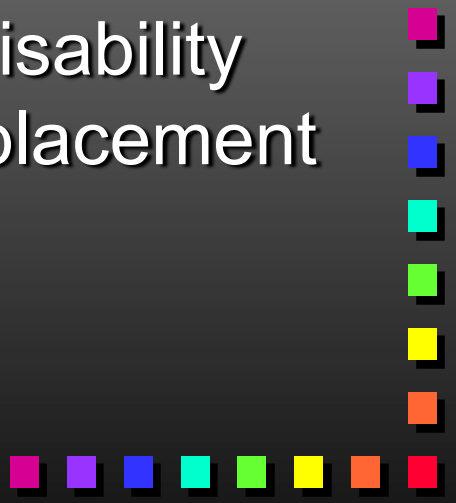
Mini-Disability Claims

- Those claims that result in over 3 days of medically-authorized temporary disability, or lost-time from work
- Usually less complex types of injuries requiring limited medical oversight
- No Permanent Disability reasonably expected
- Do not involve legal representation
- Closed or transferred to Disability Adjuster within 6 months of DOI
- Assigned to WCIT
- Labeled “Disability” claim



Disability Cases

- Those claims that result in more than 3 days of medically-authorized LC 4800/4800.5/IDL, temporary disability, or lost-time from work
- Can be more complex types of injuries requiring moderate to extensive medical oversight
- Most likely will involve permanent disability
- May involve Supplemental Job Displacement Benefit
- May involve legal representation



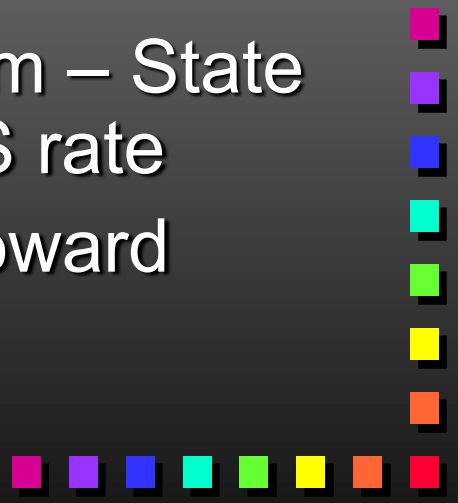
Maintenance Claims

- Settled by Stipulation
- Continuing to pay out permanent disability award and/or Life Pension
- Medical treatment for the rest of the claimant's life subject to Utilization Review

First Aid Only Claims –

Handled by the Agency

- Does not have to be reported to State Fund
- Employer MUST pay any medical bills in Full
- No time lost from work
- One time visit to a MD + one follow up for observation of minor injury
- Can be filed as a non-disability claim – State Fund will pay medical bills at OMFS rate
- Non-disability claims not counted toward Service Fees for State Agencies



Basic Benefits

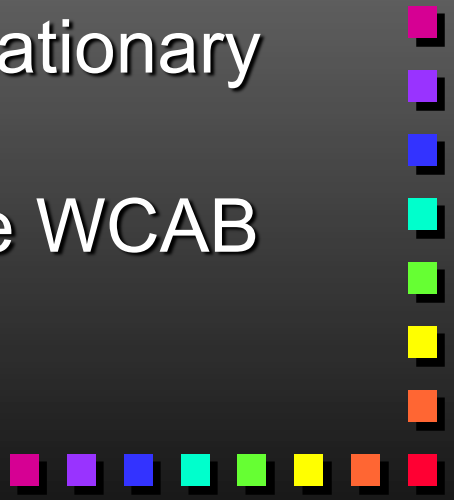
- Industrial Disability Leave (IDL)
- Labor Code 4800/4800.5
- Temporary Total Disability (TTD)
- Permanent Disability (PD)
- Life Pension
- SJDB

Benefit Notices

- Letters must be sent at the start, stop and change in every benefit paid to the claimant
- Letters explain the dates paid, the weekly rate calculation and the total benefits paid
- Letters provide explanation of rights and appeal process
- Language is regulated/mandated by the DWC (CA Code of Regulations)
- CC to the Employer

Industrial Disability Leave (IDL)

- State Fund verifies according to medical substantiation
- Employer tracks lost time and pays benefit
- 365 days within a 2 year period
- Can verify partial days for appointment purposes prior to permanent and stationary status (P&S)
- Not governed by Labor Code so the WCAB has no jurisdiction



LC 4800/4800.5

- State Fund verifies according to medical substantiation
- Employer tracks lost time and pays benefit
- Up to 365 days
- Can verify partial days for appointment purposes
- Governed by Labor Code so the WCAB has jurisdiction
- 4800 – Dept of Justice employees in Active Law Enforcement only
- 4800.5 – CHP Officers only

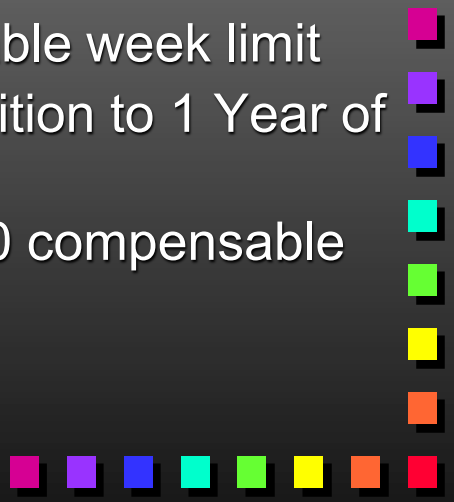
Temporary Total Disability (TD)

- Paid by State Fund
- Must be medically-authorized
- The rate is 2/3 of the claimant's average weekly wage to a current maximum of $986.69 per week
- Must be paid within 14 days of the Employer date of knowledge that disability exists or 4800/4800.5/IDL is ending, and every 14th day thereafter
- Paid in 8 hour increments (unless a wage-loss situation)

Temporary Total Disability (TD) (cont.)

- Date of injury 1/1/08 and later….
  - 104 compensable weeks total TD, within 5 years from DOI
- Date of injury 4/19/04 thru 12/31/07
  - 2 years from date first paid
  - 104 compensable weeks total TD

  - 1 year of IDL counts against the 104 compensable week limit
  - LC 4800/4800.5 allows for 2 years of TD in addition to 1 Year of 4800/4800.5 (Case Law - Matthews)
  - Some extreme injuries can extend TD up to 240 compensable weeks within first 5 years



Extreme Injuries for Temporary Disability (TD) Exceptions

- Acute and Chronic Hepatitis B & C
- Amputations
- Severe Burns
- HIV
- High Velocity
- Chemical Burn Eye Injuries
- Pulmonary Fibrosis
- Chronic Lung Disease

Temporary Total Disability (TD) Seasonal Employees

- Case Law –Jimenez
  - Two tier temporary disability indemnity payments
    - In season – based on in season wages
    - Off season – based on off season wages for prior year
      - Minimum of $148.00 per week
      - Paid nothing if earned nothing in off season
  - 14 days from the start of Season to increase TD rate

Supplemental Job Displacement Benefit (SJDB)

- DOI 1/1/04 and on going
  - Claim must be finalized
  - Non-transferable voucher
  - Determined by the settlement amount up to $10,000
  - Paid directly to a State approved or accredited school
  - Covers cost of tuition, books, supplies, counselor

Nontransferable Vouchers

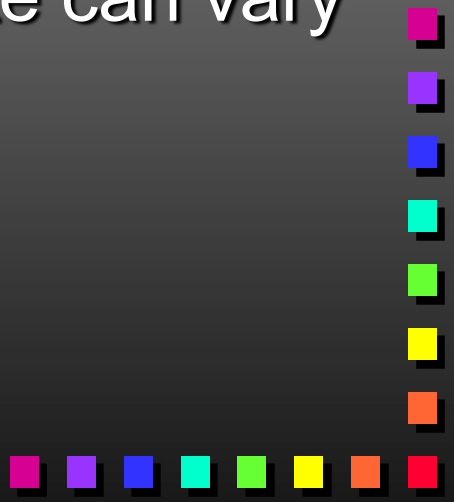
Voucher Amount	Permanent Disability
$4,000.00	Less Than 15%
$6,000.00	15% - 25%
$8,000.00	26% - 49%
$10,000.00	50% - 99%

Permanent Disability

- Starts 14 days after 4800/4800.5/IDL/TD ends or after P&S
- Based on medical findings
- Weekly Rates vary depending on the percentage of PD, date of injury and the injured workers' earnings at the time of injury. The current maximum is $270 per week

Permanent Disability (cont.)

- Each PD percentage has an assigned number of weeks of compensation
- Weeks and rates based on legislation in affect on the Date of Injury
- Number of weeks and weekly rate can vary from DOI to DOI



Permanent Disability (cont.)
Life Pension

- 70% PD or Greater = Life Pension
  - Starts upon completion of PD
  - Usually about half of PD weekly rate
  - Paid for rest of the claimant's life

- 100% PD = TD rate for the rest of the claimant's life

Medical Treatment

Labor Code 4600

Medical treatment that is reasonably required to cure or relieve the effects of an injury must be provided by the Employer

Labor Code 4604.5

Treatment is based on the Medical Treatment Utilization Standards (MTUS), American College of Occupational and Environmental Medicine (ACOEM) Guidelines or Nationally Recognized Medical Publications

State Fund Utilization Review

- District Office Health Consultants
  - Doctors
  - Chiropractors
  - Nurses
- Blue Cross
- Comp Partners

Utilization Review

- Adjusters and nurses can only authorize treatment
- Only a doctor can delay, modify or deny medical treatment
- State Fund has 5 days from receipt of request to make a determination
- Can be extended to 14 days if additional information is needed to make determination
- ***Sandhagen*** – if decision not made within the timeframes, treatment will be presumed correct and authorized

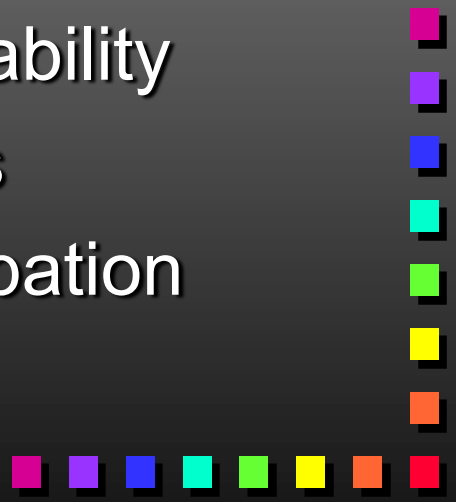
Utilization Review

If injured employee disagrees with UR decision…..

- Panel QME
- If litigated, AME

Objecting to Medical Findings of the Primary Treating Physician

- Must object within 20 days of receipt of report
- Either party can object
  - Extent and scope of treatment
  - Existence of new and further disability
  - Permanent and Stationary status
  - Inability to engage in usual occupation



QME vs. AME

- QME – Qualified Medical Evaluator
  - Unrepresented cases only
- AME – Agreed Medical Evaluator
  - State Fund and Applicant's Attorney agree on one doctor to resolve issues
  - Does not have to be a QME

Qualified Medical Evaluator (QME)
Agreed Medical Evaluator (AME)

UNREPRESENTED

If the injured employee disagrees with the finding of the PTP,

- Injured employee Requests a Panel of doctors from the DWC
- The DWC provides a list of 3 doctors
- The injured employee has 10 days from receipt to choose a doctor and schedule an appointment
- This doctor makes all the final determinations for the case

Qualified Medical Evaluator (QME)
Agreed Medical Evaluator (AME)

UNREPRESENTED

If State Fund disagrees with the findings of the PTP,

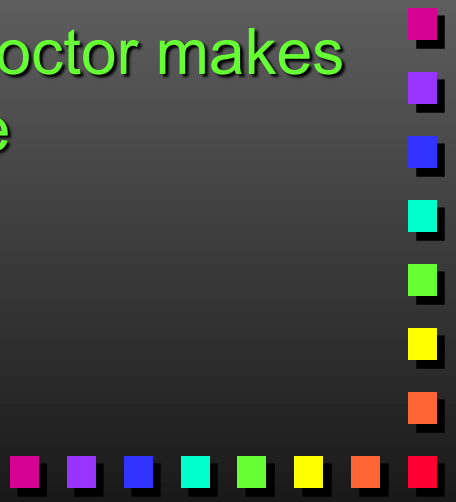
- Injured employee has 10 days to request a panel of doctors from the DWC
- If they do not, State Fund can request the panel
- Upon receipt of the panel, the injured employee has 10 days to pick a doctor and schedule an evaluation
- If they do not, State Fund can choose the doctor and schedule the evaluation
- This doctor makes all the final determinations for the case

Qualified Medical Evaluator (QME)
Agreed Medical Evaluator (AME)

REPRESENTED

If either party disagrees with the findings of the PTP

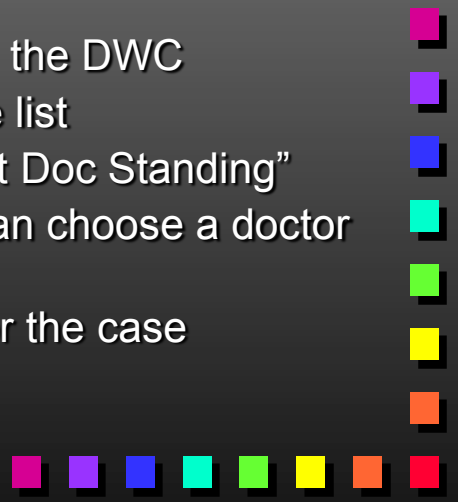
- Objection must be within 20 days (can be longer if both parties agree to a longer period of time)
- An AME must be offered
- If an AME can be agreed upon, that doctor makes all the final determinations for the case



Qualified Medical Evaluator (QME)
Agreed Medical Evaluator (AME)

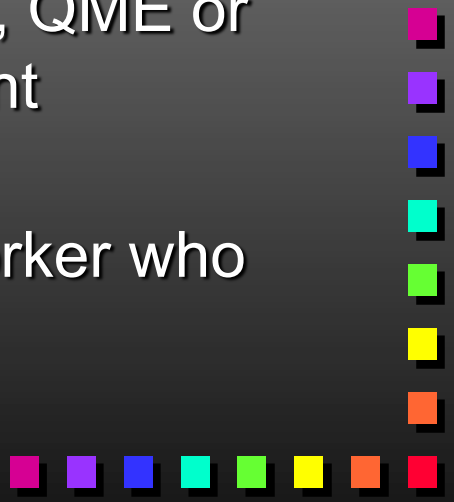
REPRESENTED

- If an AME can not be agreed upon
  - DOI Prior to 1/1/05 –
    - both parties obtained an QME
    - we tried to negotiate a settlement some where between the two values
  - DOI Post 1/1/05 –
    - Either party can request a panel of doctors from the DWC
    - Each party has 3 days to strike a name from the list
    - The last doctor left on the list is the QME – “Last Doc Standing”
    - If either fails to strike a doctor, the other party can choose a doctor and schedule an appointment
    - This doctor makes all the final determinations for the case



Permanent Disability

- Measures the residual effects of an Industrial injury as described by physicians
- The injured worker's medical condition must be Permanent and Stationary (P&S) or have reached Medical Maximum Improvement (MMI)
- The Primary Treating Physician (PTP), QME or AME determines the level of permanent impairment
- Compensation is paid to an injured worker who has a permanent impairment



Permanent Disability

- PD ratings are based solely on the objective findings of the physician
- Physician reports impairment using the American Medical Association (AMA) Guides to the Evaluation of Permanent Impairment
- Physician required to measure medical history and objective findings against the Activities of Daily Living (ADL)

Activities of Daily Living (ADL)

- Self Care
- Communication
- Physical Activity
- Sensory Function
- Non-Specialized Hand Activity
- Travel
- Sexual Function
- Sleep

Permanent Disability

- The Impairment standard is adjusted to account for the type of body part affected, the diminished future earning capacity, the injured worker's occupation and age on the date of injury

Impairment vs. Disability

- Impairment
  - Loss, loss of use, or derangement of any body part, organ system or organ function
- Disability
  - Effect of impairment on the ability to meet personal, social, and/or occupational demands

Permanent Disability (Cont.)

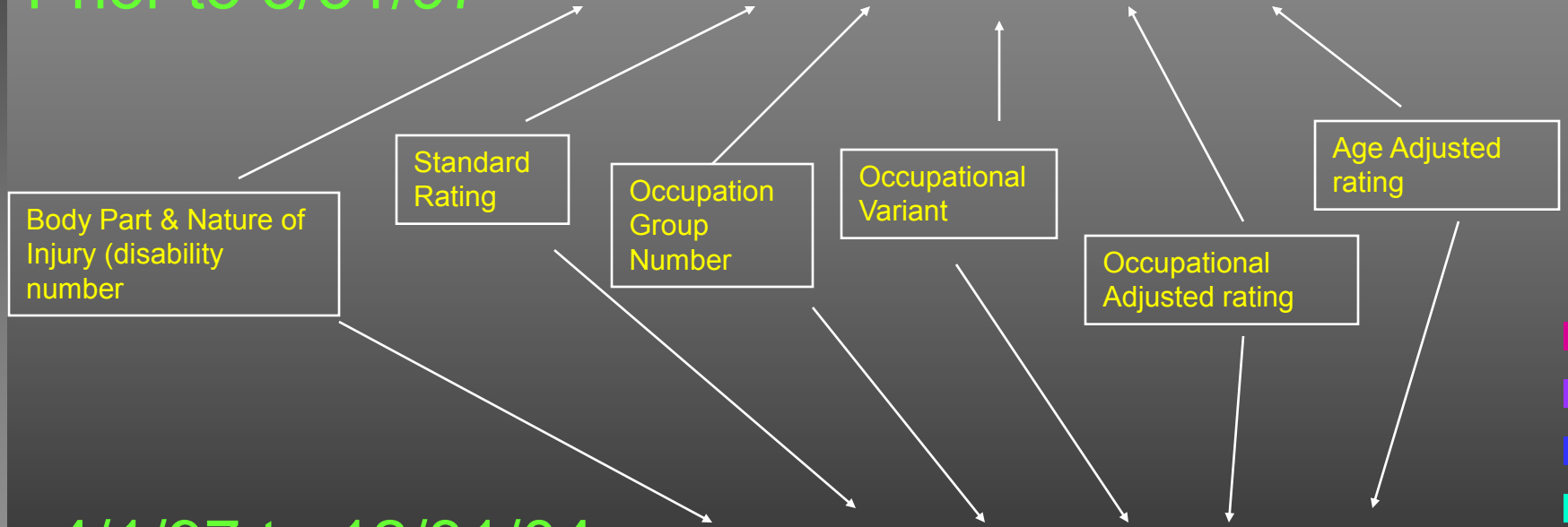
- PD Ratings can range from 0% to 100%
  - 0% = no reduction in ability to meet personal, social or occupational demands
  - 100% = *legal* total disability
    - Does not mean the employee cannot work
    - Represents a level at which one would not normally be expected to successfully meet personal, social or occupational demands

Permanent Disability Ratings

- 3 Schedules for Permanent Disability Ratings
  - 1914 (revised 1978)
  - 4/1/97 – slight differences from the first
    - Disability numbers changed
    - Occupation codes from 2 digits to 3
  - DOI 1/1/05 – Major changes
    - Disability numbers changed again
    - Standard Impairment – per AMA guides
    - Future Earnings Capacity Rank (FEC)

Rating Formula

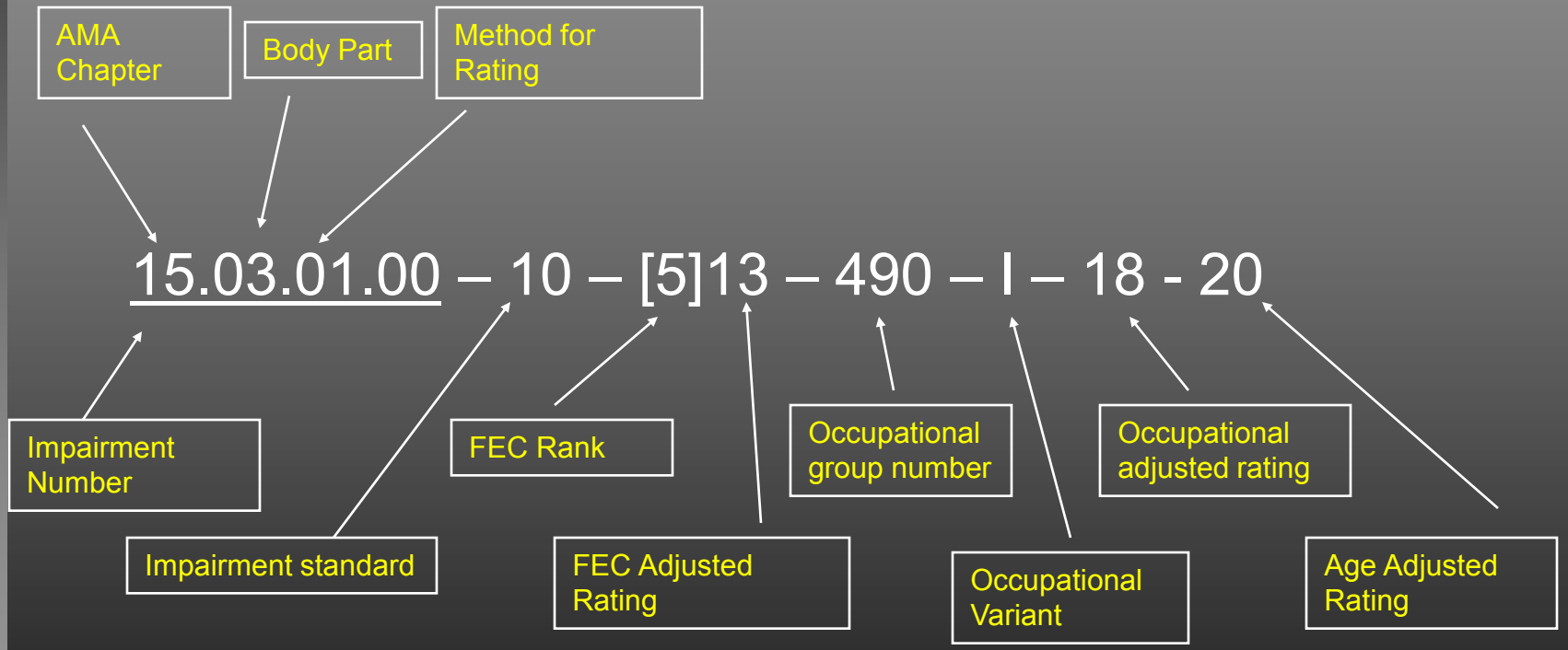
Prior to 3/31/97 8.1 – 10 – 54 – H – 13 – 15:0



4/1/97 to 12/31/04 12.1 – 10 – 490 – I – 15 - 17

Rating Formula

1/1/05 and Later



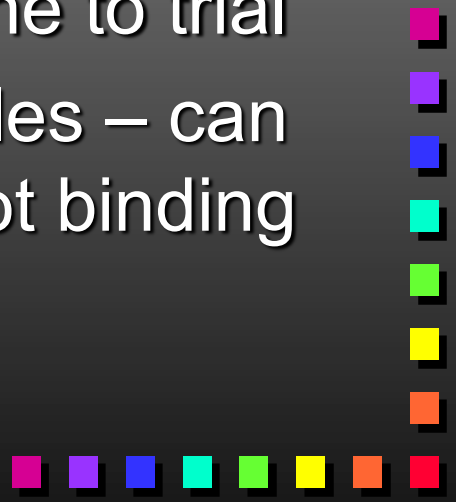
Permanent Disability Rating (cont.)

Apportionment

- Physician addresses what percentage of the impairment was caused by the industrial injury
  - Labor Code 4663 - Pre-existing non-industrial related injuries and/or conditions. Does not apply to Presumption cases
  - Labor Code 4664 - Prior disability awards – Conclusively Presumed in tact
    - 7 Regions of the Body – each up to 100%

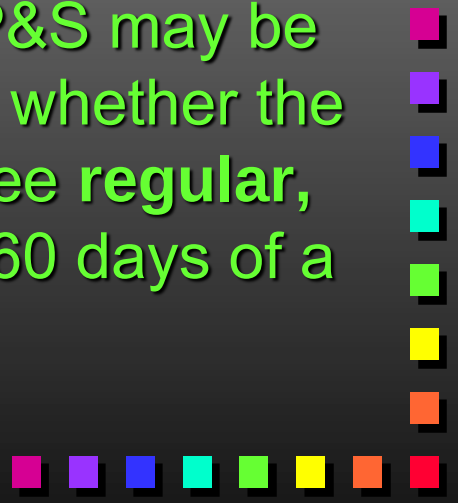
Disability Evaluations Unit

- Provide three types Disability Ratings
  - Summary Rating – on non-represented cases – must have to settle the claim
  - Formal Rating – requested by a WCAB Judge usually if the case has gone to trial
  - Consultative Rating – Litigated files – can be requested by either party – not binding



+/-15% for Regular, Modified or Alternative Work

- Dates of Injuries 1/1/05 or after
- Labor Code 4658(d)
  - Employers with 50 or more employees
    - State Agencies are considered to be a “large employer” for the purposes of determining the PD adjustment
  - Permanent Disability payments after P&S may be decreased or increased depending on whether the employer can offer the injured employee **regular, modified, or alternative work** within 60 days of a disability becoming P&S.



Regular, Modified, Alternative Work

- Regular Work
  - Usual occupation
  - Comparable position
    - wages and compensation equivalent
    - reasonable commuting distance from residence
- Modified Work
  - Regular work modified so EE can perform all functions of the job
  - Wages and Compensation are at least 85% of those paid on DOI
  - Within a reasonable commuting distance from residence

Regular, Modified, Alternative Work (cont.)

- Alternative Work
  - Work that the EE has the ability to perform
  - Wages and Compensation are at least 85% of those paid on DOI
  - Within a reasonable commuting distance from residence

Increase vs. Decrease

- Increase PD weekly rate 15% if regular, modified or alternative work not offered within 60 days of P&S

Example: If base rate is $230/week, weekly payment will increase to $264.50.

Increase vs. Decrease

- Decrease PD weekly rate 15% if regular, modified or alternative is offered for a period of at least 12 months within 60 days of P&S (regardless of whether the position is accepted or not)

Example: If the base rate is $230/week, weekly rate will decrease to $195.50.

Increase vs. Decrease

- If ER terminates the regular, modified or alternative work before the PD payments end, the amount each remaining payment will increase 15%

Example: If the base rate is $230/week and is initially decreased 15% to $195.50/week due to job offer, the remaining benefits would increase to $264.50/week.

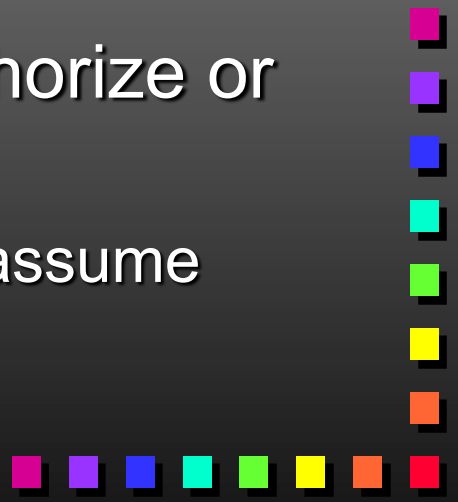
Increase vs. Decrease

- If EE voluntarily quits, he/she will not eligible for an increase of the remaining payments

Example: If the base rate of $230/week is decreased to $195.50/week, remaining payments will not revert back to the base rate

Authority Request

- When State Fund has complete medical reports fully addressing Permanent disability and apportionment
  - the adjuster works up the value of the case
  - Prepares Authority Request
- ER has 10 days after receipt to authorize or state objections
  - If no timely response State Fund can assume authority



Proposed Finalization

- Proposed Finalization for State Cases
- Finalization Worksheet
- Estimate
- Rating
- Balance Sheet

Things to consider before Settlement

5814 Penalties (Labor Code 5814)

- Up to 25% of late payment
- If 10% self-imposed penalty paid by adjuster within 90 days of knowledge - no additional penalty can be awarded

Things to consider before Settlement

132A (Labor Code 132a)

- Discrimination as a result of employee filing a claim
- One half of the value of the claim
  - (all species of benefits – TD, PD, VR & medical – past, present and future) in addition to all entitled benefits up to $10,000

Things to consider before Settlement

Serious and Willful (S&W)

- Labor Code 4553
- Employer knowledge of a hazard prior to an injury may expose the Department
- One half of the value of the claim
  - (all species of benefits – TD, PD, VR & medical – past, present and future) in addition to all entitled benefits

Things to consider before Settlement

Subrogation

- Third Party Liability
  - Motor Vehicle Accident
  - Defective Products
    - Chairs, elevators, equipment, etc….
- Subrogation Legal Unit
- Recovery
  - Cash
  - Statutory Credit – applied toward future benefits

Things to consider before Settlement

Liens

- EDD
- Child Support
- Medical
  - Provider can file a lien within
    - 6 months from the date of settlement
    - 5 years from the date of injury
    - 1 year from the date services were provided
  - Whichever is later

Things to consider before Settlement

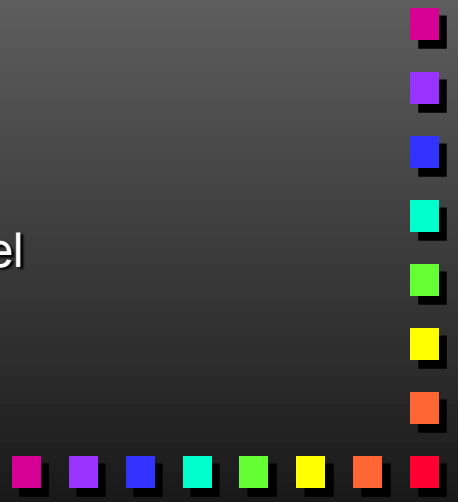
Medicare Set-Aside

- Needed on all C&R's over $250,000 and will be on Medicare in the next 30 months
- If currently on Medicare
  - All C&Rs must have a set aside
  - Only those over $25,000 are submitted to CMS for approval

Mandatory Settlement Conference (MSC)

- Declaration of Readiness (DOR)
  - Offer of Settlement must be made prior to DOR
  - Once a DOR is filed, parties must Object within 10 days
  - MSC will be scheduled whether there is an objection or not.

- Preparation for MSC
  - Authority from Employer
  - List of Witnesses
  - All exhibits to be presented as evidence
    - Medical, investigation, subrosa tapes, personnel documentation, etc…



Mandatory Settlement Conference (MSC) cont.…

- Goal – to settle all issues if possible
- If unable to settle – set for trial
  - Discovery closed by Judge

Claims Resolution

Four basic types of formal resolution...

Stipulations with Request for Award

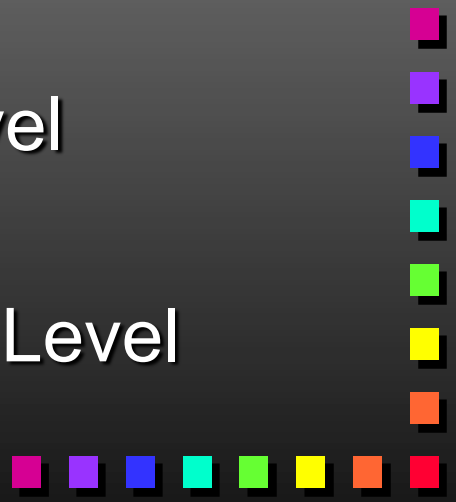
- Settles permanent disability
  - PD paid out every two weeks
  - LP there after (if due) for the rest of the claimant's life
- Leaves Future Medical open for the rest of the claimant's life

Compromise and Release

- Usually buys out all PD and Future medical for one lump sum to be paid out immediately
- Not usually considered if the employee has returned to work for the same employer

Findings and Award

- Issued after Trial
- Determination by the Judge
  - 20 days to object to findings
  - File Petition for Reconsideration (Recon)
- Appeal
  - Reviewed at Appellate Court Level
- Writ of Certiorari
  - Reviewed at the Supreme Court Level



Dismissal

- Notify all parties of intent to dismiss
- Parties have 20 days to object
- Judge reviews and issues determination
  - Allows 10 days for objection before decision is final

Closing Claims

- Non-represented claims with no activity
  - Adjuster must send closing notification
  - Close if no activity for 6 months
- Represented claims can not be closed until settled and all liens resolved

Closing Claims

- Stipulations & F&As
  - After all benefits have been paid out in full (IDL, TD, PD, LP, VR)
  - All liens are settled and paid
  - Minimal medical treatment in the last 12 months
- C&R
  - Immediately after settlement is paid
  - All liens are settled and paid

Points to Remember

- Time Limits & Penalties on all benefits
- Time Limits on Authority Requests
- Discovery Must be Complete before the MSC
- Provide all available information to State Fund adjuster/attorney
- Communicate with your adjuster

COMMUNICATE…COMMUNICATE…
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Resources For More Information

- The California Labor Code
  www.leginfo.ca.gov/calaw.html
- The Department of Industrial Relations
  www.dir.ca.gov
- The Division of Workers' Compensation
  www.dir.ca.gov/dwc
- California Workers' Compensation Institute
  www.cwci.org
- State Compensation Insurance Fund
  www.Statefundca.com
- Department of Personnel Administration
  www.dpa.ca.gov